IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10182 OF 2004

Pappu Kailashchand Agrawal & anr..... Petitioner

versus

Vishwanath Waman Tanpathak ... Respondents.

Shri Umesh Malkapure for the petitioner.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 22, 2006.

P.C:

1. Heard the learned counsel for the Petitioner.

Perused the record.

2. This petition is preferred against the judgment and order passed by the Addl. District Judge, Nashik on 20-7-2004 dismissing the petitioner's appeal and confirming the judgment and order passed by the trial court for eviction of the petitioner from the suit premises under the provisions of Bombay Rent Act.

3. The plaintiff filed the suit stating that he was the owner of the property city survey no. 1313 to 1315 which were Municipal houses no. 603 and 604 situated

at Trimbakeshwar, District Nashik. The suit property was ancestral property which was given to the plaintiff by way of family partition and out of the suit properties, two rooms on the western side on ground floor admeasuring 10 x 10 ft each are in possession of the defendant for his residence by paying monthly rent of Rs.15/-. It is the case of the plaintiff that the defendant did not pay the rent regularly, and since July 1996 the defendant has withheld the rent and plaintiff terminated the tenancy of the defendants by issuing notice and sought the possession of those suit rooms. The plaintiff also averred that he is in requirement of the said suit premises for his bonafide use and occupation and he has testified that he has been retired from his service and now he is living in the house of his son at his mercy. He also stated that he wants to reside at Trimbakeshwar and wants to do the profession as priest. Plaintiff has also averred that the defendants have acquired alternative suitable accommodation and would not suffer greater hardship if the decree of eviction is passed. On the contrary according to the plaintiff he would suffer greater hardship if the decree of possession is not passed in his favour.

4. The defendant interalia denied all the allegations

and challenging the grounds raised by the plaintiff and sought dismissal of the suit. The learned trial Judge after hearing both the parties came to the conclusion that the plaintiff had proved that the defendant has not paid the rent regularly and made default in the payment of rent and hence got the right to terminate the tenancy of the defendant. It has been also brought on record that the defendants have acquired alternate suitable accommodation for their residence. On all these counts, the trial Judge came to the conclusion that the plaintiff is entitled to the decree of possession along with rent and hence decree came to be passed.

5. An appeal was carried to the District Court. The lower appellate court after hearing both the sides dismissed the appeal. Hence the present petition.

6. At the outset it may be noted that on perusal of the judgment of both the courts below along with the surrounding circumstances, which would show that the plaintiff had succeeded in proving that the alleged suit against the defendant contemplated under section 13(1)(i) of the Bombay Rent Act along with the default in the payment of rent and as such there is no doubt

whatsoever that the courts below have rightly concluded that the petitioner is liable to be evicted from the suit premises.

7. So far as the bonafide requirement of the plaintiff is concerned, it is his case that he was serving at Bombay and was residing at Dombivli with his son. However now he is retired and wants to settle at Trimbakeshwar and wanted to workpriest for which purpose he requires the suit premises for his own residence. Both the courts below have held that the said requirement is bonafide and therefore is proved to be proper. It was submitted on behalf of the petitioner that the suit property is ancestral property and though he has claimed that the partitions are concluded, there is no evidence of partition whereby it would be seen that he has become the landlord of the suit property. However, documents at Exh. 43 to 45 which are extracts of the city survey record, show that the names of other sharers are deleted and the only name of the plaintiff is kept as owner of the said property, which aspect is supported by the submission of the plaintiff that he is the sole owner of the property.

8. It has also come in the evidence that the defendant has acquired alternate accommodation consisting of 10

rooms. It is submitted on behalf of the petitioner that the said property is in the name of himself as well as his nephew. However fact remains that he has acquired property along with his nephew, which fact shows that there is suitable accommodation available for his use. The point of hardship is also decided by the courts below holding that the plaintiff would suffer greater hardship if the decree is refused to be passed than the defendant if the decree is passed against him.

9. In short taking into account all the relevant aspects involved in the dispute, there is absolutely no perversity to be found in the finding of the courts below in the appreciation of the available evidence and as such no interference is called for.

10. In the result the petition stands dismissed in limine. At this stage the learned advocate for the petitioner submits that the petitioner should be given sometime to vacate the premises. In view of the facts and circumstances, the petitioner is given time of three months to vacate the premises from the date of this order on condition that:

a) the petitioner shall furnish undertaking to this court to that effect:

b) No third party interest would be created during the said period in the suit premises and during such period the arrears of rent and regular rent shall be paid to the respondent as per law.

c) The undertaking to be furnished within two weeks from the date of this order.

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